

AMENDED IN SENATE JULY 8, 1998
AMENDED IN SENATE JUNE 22, 1998
AMENDED IN SENATE MAY 26, 1998
AMENDED IN SENATE MARCH 19, 1998
AMENDED IN ASSEMBLY JANUARY 15, 1998
AMENDED IN ASSEMBLY JANUARY 5, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1617

Introduced by Assembly Member Baca
(Principal coauthor: Assembly Member Scott)
(Coauthors: Assembly Members Aguiar, Alquist, Baldwin,
Bowler, Cunneen, Havice, Hertzberg, House, Kuykendall,
Leach, McClintock, Shelley, Villaraigosa, and Washington)
(Coauthors: Senators Brulte, *Haynes*, *Leslie*, Lewis, and
Watson)

August 26, 1997

An act to add Section 43.2 to the Civil Code, and to add Chapter 4.5 (commencing with Section 6400) to Division 7 of Title 1 of the Government Code, relating to religious freedom.

LEGISLATIVE COUNSEL'S DIGEST

AB 1617, as amended, Baca. Religious Freedom Protection Act.

(1) The First Amendment to the United States Constitution provides that Congress shall make no law

respecting an establishment of religion, or prohibiting the free exercise of religion and the California Constitution provides that the free exercise and enjoyment of religion without discrimination or preference is guaranteed.

This bill would declare that its purpose is to codify the principle that government should not substantially burden religious exercise without compelling justification, and then only by the least restrictive means consistent with that compelling justification, as set forth in *People v. Woody*, 61 Cal. 2d 716, *Sherbert v. Verner*, 374 U.S. 398, and *Wisconsin v. Yoder*, 406 U.S. 205, and provide a claim or defense to persons whose religious exercise is substantially burdened by government. This bill would prohibit government, as defined, from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability, except if government demonstrates that application of the burden to the person is both in furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest. This bill would permit a person whose religious exercise has been burdened in violation of these provisions to assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. This bill would also make various legislative findings and declarations with respect to these provisions.

(2) Under existing law, each person is afforded various personal rights.

This bill would specify that the free exercise of religion is a substantive right that applies in this state even in instances where laws, regulations, or other governmental actions are facially neutral. This bill would also provide that laws, regulations, and other governmental actions shall be subject to the Religious Freedom Protection Act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
2 declares all of the following:



1 (a) The compelling governmental interest test in the
 2 Religious Freedom Protection Act, as added by this act,
 3 has been used repeatedly in case law relating to religious
 4 liberty and other fundamental rights. It is expected that
 5 in applying this standard in cases brought under the
 6 Religious Freedom Protection Act, courts will look to that
 7 case law, including decisions construing the federal
 8 Religious Freedom Restoration Act (42 U.S.C. Sec.
 9 2000bb et seq.). The Religious Freedom Protection Act is
 10 not intended to codify or reject the holding or reasoning
 11 of any particular case, including cases construing the
 12 federal Religious Freedom Restoration Act or any other
 13 federal or state statute. However, the Legislature
 14 respects the role that persuasive authority and precedent
 15 play in the legal system and realizes that courts are
 16 influenced in deciding cases by decisions that apply the
 17 same standard to similar facts.

18 (b) Nothing in this act shall be construed to alter the
 19 existing balance between religious liberty claims and
 20 other civil and constitutional rights. No inference should
 21 be drawn that by substituting a new subdivision (d) of
 22 Section 6404 of the Government Code, as added by this
 23 act, for the subdivision (d) that was adopted in the
 24 Assembly on January 15, 1998, that the Legislature
 25 intends to further discrimination. Indeed, subdivision (d)
 26 of Section 6404 of the Government Code, in its present
 27 form, should be read in the context of language in
 28 paragraph (1) of subdivision (b) of Section 6400 of the
 29 Government Code, as added by this act, which states that
 30 the bill’s codification of principles is intended to be
 31 consistent with the compelling governmental interest
 32 justification, as set forth in *People v. Woody*, 61 Cal. 2d 716
 33 (1964), *Sherbert v. Verner*, 374 U.S. 398 (1963), and
 34 *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Cases such as
 35 *Wisconsin v. Yoder* have employed a discussion of the
 36 rights of third parties in evaluating free exercise claims.

37 (c) The definition of “exercise of religion” contained
 38 in the Religious Freedom Protection Act is intended to
 39 reject discussions of centrality in determining whether a
 40 practice constitutes an “exercise of religion.” Some courts

1 have engaged in such discussion, while others have not.
2 Discussion of “centrality” improperly involves state
3 intrusion into questions of individual faith. The relevant
4 inquiry is whether a practice is substantially motivated by
5 a sincerely held religious belief. While both traditional
6 and nontraditional believers have been improperly
7 scrutinized under the centrality test, often it has been
8 adherents of nontraditional or unfamiliar minority faiths
9 whose claims have been barred by discussions of
10 centrality.

11 SEC. 2. Section 43.2 is added to the Civil Code, to
12 read:

13 43.2. (a) Free exercise of religion is a substantive
14 right that applies in this state even in instances where
15 laws, regulations, or other governmental actions are
16 facially neutral.

17 (b) Laws, regulations, and other governmental actions
18 shall be subject to Chapter 4.5 (commencing with Section
19 6400) of Division 7 of Title 1 of the Government Code.

20 SEC. 3. Chapter 4.5 (commencing with Section 6400)
21 is added to Division 7 of Title 1 of the Government Code,
22 to read:

23
24 CHAPTER 4.5. RELIGIOUS FREEDOM PROTECTION ACT
25

26 6400. (a) The Legislature hereby finds the following:

27 (1) The framers of the United States Constitution,
28 recognizing free exercise of religion as an inalienable
29 right, secured its protection in the First Amendment to
30 the United States Constitution.

31 (2) The framers of the California Constitution,
32 recognizing free exercise and enjoyment of religion
33 without discrimination or preference as an inalienable
34 right, guaranteed this right under Section 4 of Article I of
35 the California Constitution.

36 (3) The State of California has independent authority
37 to protect the free exercise of religion by principles that
38 are separate from, complementary to, and more
39 expansive than the First Amendment to the United States
40 Constitution.

1 (4) The Legislature, under its police powers, may
2 create statutory protections that codify and supplement
3 rights guaranteed by the California Constitution.

4 (5) Laws facially neutral toward religion may burden
5 religious exercise as surely as laws intended to interfere
6 with religious exercise.

7 (6) Government should not substantially burden
8 religious exercise without compelling justification, and
9 then only by the least restrictive means consistent with
10 that compelling justification.

11 (7) In certain circumstances, courts have found
12 health, safety, antidiscrimination, and other concerns to
13 constitute compelling governmental interests.

14 (8) Nothing in this act shall be construed to alter the
15 existing balance between religious liberty claims and
16 other civil and constitutional rights. No inference should
17 be drawn that by substituting a new subdivision (d) of
18 Section 6404 of the Government Code, as added by this
19 act, for the subdivision (d) that was adopted in the
20 Assembly on January 15, 1998, that the Legislature
21 intends to further discrimination. Indeed, subdivision (d)
22 of Section 6404 of the Government Code, in its present
23 form, should be read in the context of language in
24 paragraph (1) of subdivision (b) of Section 6400 of the
25 Government Code, as added by this act, which states that
26 the bill's codification of principles is intended to be
27 consistent with the compelling governmental interest
28 justification, as set forth in *People v. Woody*, 61 Cal. 2d 716
29 (1964), *Sherbert v. Verner*, 374 U.S. 398 (1963), and
30 *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Cases such as
31 *Wisconsin v. Yoder* have employed a discussion of the
32 rights of third parties in evaluating free exercise claims.

33 (b) The purposes of this chapter are the following:

34 (1) To codify the principle that government should
35 not substantially burden religious exercise without
36 compelling justification, and then only by the least
37 restrictive means consistent with that compelling
38 justification, as set forth in *People v. Woody*, 61 Cal. 2d 716
39 (1964), *Sherbert v. Verner*, 374 U.S. 398 (1963), and
40 *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

1 (2) To provide a claim or defense to persons whose
2 religious exercise is substantially burdened by
3 government.

4 6401. This chapter shall be known and may be cited
5 as the “Religious Freedom Protection Act.”

6 6402. (a) Free exercise of religion is a substantive
7 right that applies in this state even in instances where
8 laws, regulations, or other governmental actions are
9 facially neutral.

10 (b) Government shall not substantially burden a
11 person’s exercise of religion even if the burden results
12 from a rule of general applicability, except as provided in
13 subdivision (c).

14 (c) Government may substantially burden a person’s
15 exercise of religion only if it demonstrates that
16 application of the burden to the person is both of the
17 following:

18 (1) In furtherance of a compelling governmental
19 interest.

20 (2) The least restrictive means of furthering that
21 compelling governmental interest.

22 (d) A person whose religious exercise has been
23 burdened in violation of this section may assert that
24 violation as a claim or defense in a judicial proceeding and
25 obtain appropriate relief against a government.

26 6403. As used in this chapter:

27 (a) “Demonstrates” means meets the burdens of
28 going forward with the evidence and of persuasion.

29 (b) “Exercise of religion” means an act or refusal to act
30 that is substantially motivated by sincerely held religious
31 belief, whether or not the religious exercise is compulsory
32 or central to a larger system of religious belief.

33 (c) “Government” includes a branch, department,
34 agency, instrumentality, and official (or other person
35 acting under color of law) of the state or a political
36 subdivision of the state.

37 (d) “Person” for the purposes of this section includes
38 an individual, partnership, association, corporation,
39 organization, or any other combination thereof.

(e) “Political subdivision of the state” for the purposes of this section includes a county, city, whether general law or chartered, city and county, school district, municipal corporation, or district, or any board, commission, or agency thereof, or any other local public agency.

6404. (a) This chapter applies to all state law, and the implementation of that law, whether statutory or otherwise, and to all laws, ordinances, regulations, and governmental actions in this state, whether adopted before or after the effective date of this chapter.

(b) This chapter applies to all cities, including charter cities. The Legislature finds and declares that free exercise of religion is a matter of statewide concern and is not merely a municipal affair or a matter of local interest.

(c) Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(d) Nothing in this chapter shall be construed to require that religious liberty claims always prevail over, or always be subordinate to, other civil or constitutional rights.

(e) To the extent this chapter creates new rights to monetary damages, nothing in this chapter shall be construed to allow the imposition of monetary damages on any state or local government entity for acts occurring prior to January 1, 1999.

6405. Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment to the United States Constitution and Section 4 of Article I, Section 8 of Article IX, and Section 5 of Article XVI of the California Constitution, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions to the extent permissible under the United States and California Constitutions shall not constitute a violation of this chapter. As used in this section, “granting” used with respect to government funding, benefits, or exemptions does not include the denial of government funding, benefits, or exemptions.

1 6406. The provisions of this chapter are severable. If
2 any portion of this chapter should be declared invalid by
3 a court of competent jurisdiction, it is the intent of the
4 Legislature that the other provisions of this chapter
5 remain in effect.

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